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Analysis of Enrolled Senate Bill 1236

Topic: Uniform Commercial Code Financing Statements
Sponsor: Senator Kahn
Co-Sponsors: None
Committee: Senate Judiciary
House Banking and Financial Services (discharged)

Date Introduced: March 26, 2008

Date Enrolled: December 22, 2008

Date of Analysis: December 17, 2008

Position: The Department of Labor & Economic Growth supports the bill.

Problem/Background: Public officials such as judges, policemen, DNR officers, and DEQ officers may occasionally encounter disgruntled individuals who attempt to "get back" at them in some way. Individuals have been known to file fraudulent financing statements against those officers in an attempt to harass them or cause them financial harm. Recent incidents initiated the introduction of this legislation, which piggybacks similar legislation that became effective in 2005. That legislation did not go far enough, as an aggrieved person would have to file suit, and get a judgment against a person who filed a fraudulent claim. This is an expensive and lengthy process. Testimony during the committee meetings on this bill involved a case in the Third Circuit Court of an egregious example of a UCC statement filed against a judge by a prison inmate, which was clearly false. The judge was required to go to court to terminate the statement, but by that time, he could have suffered permanent harm because these statements can affect an individual's credit rating, and even once the statement is terminated, there is no way to tell if the information will still affect a person's financial well-being. The prisoner had no assets or means of providing any type of restitution, so the costs were all carried by the victim.

Further research reveals that this is a growing national problem, even being perpetrated against banks and other financial companies, as well as federal officials. The best way to fight this has been to allow some type of expedited process to terminate these financial statements.

Description of Bill: The bill permits the Secretary of State to refuse to accept a filing under certain circumstances, including:

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- The record is not required or authorized to be filed or recorded with the Secretary of State.
- The record is being filed or recorded for a purpose outside the scope of Article 9 of the Uniform Commercial Code.
- There is reasonable cause to believe the record to be materially false or fraudulent.
- The record is intended for an improper purpose, including asserting a claim against a current or former public official related to the performance of that official's duties and for which the filer does not hold a properly executed security agreement or judgment.
- The record indicates that the debtor and the secured party are substantially the same or that an individual debtor is a transmitting utility.

A determination that a previously filed record was wrongfully filed based on a correction statement must be made without undue delay. The Secretary of State may require the person who filed the correction statement or the secured party to provide additional relevant information, including an original or copy of a security agreement. If a finding is made that the record was wrongfully filed, the record is required to be terminated and is void and ineffective. The secured party would be notified of the termination.

The bill provides for an action under Section 9501A [*Note: This is the new section being enacted in House Bill 5934*] in the event the Secretary of State refuses to accept a record for filing or recording. A filing officer is not personally liable for improper refusal or determination to file a record as long as he or she acted in a manner that does not subject the filing officer to personal liability under the laws of the state. The new language permitting the Secretary of State to refuse to accept a record does not apply to a financing statement filed by a regulated financial institution or its representative. Verification of regulation or licensure may be requested from financial institutions organized under the laws of another governmental unit.

Language relating to the model UCC Financing Statement in Section 9521 is deleted and replaced with a provision requiring that the financing statement conform to the current format prescribed by the National Conference of Commissioners on Uniform State Laws.

Section 9527 of the Uniform Commercial Code is repealed. This is a section requiring a report by the Secretary of State to the Governor on the operation of the filing office.

An amendment was inserted in the House tie-barring the bill to House Bills 5934-5.

Summary of Arguments

Pro: By providing a quicker method for terminating a false statement and providing grounds for refusing to file a false statement, the bill protects public officials from harassment from individuals impacted by the performance of the public officials' duties.

Con: The bill includes items that seem to be unrelated to the worthwhile purpose of deterring individuals from using financing statements to harass public officials in the performance of their duties.

Fiscal/Economic Impact

(a) **Department:** The bill will have no budgetary or revenue impact on the department.

(b) **State:** The bill will have no budgetary or revenue impact on the state.

(c) **Local Government:** The bill provides protection from harassment to local public officials.

Other State Departments: The Departments of Natural Resources, State, and State Police have an interest in this bill.

Any Other Pertinent Information: None.

Administrative Rules Impact: The Secretary of State has rulemaking authority under the act for filing office procedures.